

Where brokerage commissions are impressed with a trust and the brokers are obligated to deposit them in a special fund to be administered for public purposes, such commissions do not constitute income to the brokers. However, underwriting commissions retained by the underwriters constitute income to the recipients.

The handling of an insurance program for a municipal board of education and the receipt of brokerage commissions which are required to be deposited in a special fund for public purposes, does not affect the status of an insurance board held to be exempt from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954.

Furthermore, such activity is not considered to be an unrelated trade or business within the meaning of section 513 of the 1954 Code.

Advice has been requested concerning the taxability of certain brokerage commissions received by individual insurance brokers, but which are deposited in a special fund used for public purposes.

A local insurance board, which has been held to be tax exempt under section 101(7) of the Internal Revenue Code of 1939 (corresponding to section 501(c)(6) of the 1954 Code), was requested by the municipal board of education to make a study of its insurance requirements and to recommend the nature and extent of the insurance coverage deemed necessary. The insurance board served gratuitously and appointed an advisory council consisting of insurance brokers with the authority to call upon the advice, counsel, and guidance of specialists in every form of insurance; to lend its efforts to advise the board of education in obtaining the broadest available insurance and surety protections; and to assist in the selection of an underwriting insurance company or companies. However, the actual selection of the insurance company and the authorized agent or agencies was left to the discretion of the board of education. The advisory council had no power to negotiate insurance contracts or receive commissions and donated their services without the expectation of a fee or reward.

The board of education adopted the recommendations of the insurance advisory council and placed insurance through underwriting agencies who are members of the insurance board. The underwriting agency retained as its income the underwriting commission which is normally earned on placing insurance, but the brokerage commission which is normally paid to the broker responsible for the insurance business was paid to a broker or brokers designated by the board of education. In every case, the brokers designated by the board of education were members of the insurance advisory council appointed by the insurance board and

received the commissions in their capacity as members of the advisory council. Brokerage commissions received in this manner were allocated to a special fund established by the insurance board and deposited in a separate bank account. This special fund is used solely for public interests, that is, accident and fire prevention, auto driver education, life saving, and other means designed for the preservation of life and property. The fund is in no way used by the board of education for its regular activities but is used only for the special purposes enumerated and is administered by a committee consisting of members of the advisory council and of the insurance board.

The acceptance of an appointment to the advisory council by the insurance board obligates the insurance broker to apply any commissions received, by virtue of the business with the board of education, to the special fund. As a practical matter, the broker receiving the commissions will not have been directly responsible for the purchase of the insurance and would, therefore, have no personal claim to such commissions. The assignment of the commissions is merely a means of transferring the monies to the special fund.

The specific questions thus raised are in connection with whether (1) the brokerage commission may be excluded from the gross income of a broker who serves on the advisory council and who is designated by the board of education to receive the commissions payable on the insurance policies purchased by the board of education; (2) the insurance board may continue as a tax-exempt organization; and (3) the brokerage commissions received by the advisory council will constitute income to the insurance board under the provisions of section 511 of the Internal Revenue Code of 1954.

Section 61 of the Code provides that all income from whatever source derived, including commissions, shall be included in gross income, except as otherwise provided. Section 511 of the Code provides, in part, that a tax shall be imposed on the unrelated business taxable income of a business league, chamber of commerce, real-estate board, or board of trade described in section 501(c)(6) of the Code.

However, in the case of *Commissioner v. Turney*, 82 Fed. (2d) 661, the court stated, in part, that tax officials are not required to treat as income money received by a taxpayer when, under well-settled law, his receipt of it has the effect of obligating him unconditionally to pay that money to another.

Also, in the case of *The Seven-Up Co. v. Commissioner*, 14 T.C. 965, acquiescence C.B. 1950-2, 4, it was held that when a taxpayer receives funds that are burdened with an obligation to be expended for a specific purpose and the funds are earmarked for such purpose, the funds so held do not result in gain or income to the taxpayer.

Since, in the instant case, the brokerage commissions are

impressed with a trust and the brokers are obligated to deposit them in the special fund to be administered for public purposes by the insurance board, it is held that they do not constitute income to the brokers and should be excluded from their gross income. However, the underwriting commissions received by the underwriting agency constitute income to the recipients thereof.

It is further held that the handling of the insurance program for the board of education and the receipt of the brokerage commissions which are to be placed in a special fund and expended for public purposes will not affect the exempt status of the insurance board under section 501(c)(6) of the Code.

Furthermore, such activity is not considered an unrelated trade or business, since all the work is performed for the insurance board without compensation. Therefore, the brokerage commissions allocated to the special fund do not constitute unrelated business taxable income and the insurance board is not subject to tax with respect to such commissions.